

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 20th day of September, two thousand and six.

PRESENT:

HON. JON O. NEWMAN,  
HON. ROBERT A. KATZMANN,  
HON. RICHARD C. WESLEY,  
*Circuit Judges.*

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Altin Cekaj,

*Petitioner,*

v.

No. 06-0686-ag  
NAC

Alberto R. Gonzales, Attorney General,  
*Respondent.*

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FOR PETITIONER: Robert J. Pures II, New York, New York.

FOR RESPONDENT: Kenneth L. Wainstein, United States Attorney, Madelyn Johnson,  
David Carey Woll, Jr., Assistant United States Attorneys,  
Washington, D.C.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals ("BIA"), it is hereby ORDERED, ADJUDGED, AND DECREED, that the

petition for review is DENIED.

Altin Cekaj, a native and citizen of Albania, seeks review of a January 17, 2006 order of the BIA affirming the December 14, 2004 decision of immigration judge (“IJ”) Michael Straus denying Cekaj’s applications for asylum, withholding of removal, and relief under the Convention Against Torture. *In re Altin Cekaj*, No. A95 841 145 (B.I.A. Jan. 17, 2006), *aff’g* A95 841 145 (Immig. Ct. Hartford, December 14, 2004). We assume the parties’ familiarity with the underlying facts and procedural history of the case.

Where, as here, the BIA agrees with the IJ’s conclusion that a petitioner is not credible and, without rejecting any of the IJ’s grounds for decision, emphasizes particular aspects of that decision, this Court reviews both the BIA’s and IJ’s opinions -- or more precisely, the Court reviews the IJ’s decision including the portions not explicitly discussed by the BIA. *Yun-Zui Guan v. Gonzales*, 432 F.3d 391, 394 (2d Cir. 2005). This Court reviews the agency’s factual findings under the substantial evidence standard, treating them as “conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *see also Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004). However, an IJ’s adverse credibility determination may not be based on speculation or conjecture; the IJ must give specific and cogent reasons for disbelieving an applicant’s testimony. *See, e.g., Cao He Lin v. U.S. Dep’t of Justice*, 428 F.3d 395, 400 (2d Cir. 2005).

Here, the IJ’s adverse credibility determination can be upheld under this framework. The IJ reasonably relied on the unexplained discrepancy regarding the timing of Cekaj’s medical treatment, as the question of timing relates directly to the sequence of events surrounding an instance of alleged persecution on account of Cekaj’s membership in the Democratic Party, and

1 also reasonably rejected Cekaj's explanation as inadequate. The IJ was also reasonable in relying  
2 on inconsistencies between an asylum officer's assessment memorandum and Cekaj's hearing  
3 testimony as a factor that negatively impacted Cekaj's overall credibility, as the memorandum  
4 was "meaningful, clear, and reliable." *See Maladho Djehe Diallo v. Gonzales*, 445 F.3d 624,  
5 631-33 (2d Cir. 2006); *Matter of S-S-*, 21 I. & N. Dec. 121 (BIA 1995). Additionally, it was  
6 reasonable for the IJ to find implausible Cekaj's explanation that his submitted letters had been  
7 written well before his departure from Albania for identification and police complaint purposes  
8 and had been translated in relation to his brother's asylum application, especially in light of his  
9 brother's testimony that his parents had not verified or sent him any documents. Finally, the IJ  
10 reasonably concluded that it was implausible that the letter from the Democratic Party was  
11 written for identification as a party member within Albania, as it detailed Cekaj's specific  
12 activities with the party, the fact that two of his relatives had been shot during the communist  
13 regime, and that his life was in danger in Albania.

14 The IJ's adverse credibility determination is thus substantially supported by the record as  
15 a whole. Because the only evidence of a threat to Cekaj's life or freedom depended upon his  
16 credibility, the adverse credibility determination in this case necessarily precludes success on the  
17 claim for withholding of removal. *See Wu Biao Chen v. INS*, 344 F.3d 272, 275 (2d Cir. 2003).  
18 Moreover, as the evidence in the record does not indicate that Cekaj is more likely than not to be  
19 tortured, the denial of his CAT claim is also well-founded. *See Ramsameachire v. Ashcroft*, 357  
20 F.3d 169, 184 (2d Cir. 2004).

21 \_\_\_\_\_For the foregoing reasons, the petition for review is DENIED. The pending motion for a  
22 stay of removal in this petition is DENIED as moot. Any pending request for oral argument in

1     this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and  
2     Second Circuit Local Rule 34(d)(1).

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6                     FOR THE COURT:  
7                     Roseann B. MacKechnie, Clerk

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9                     By:\_\_\_\_\_